

REMARKS

Claims 1-13 are pending herein. Claims 4, 6, 10 and 11 have been withdrawn from consideration as being directed to a non-elected invention. By this Amendment, claim 13 has been cancelled; claim 1 has been amended; and new claim 14 has been added.

Claim 1 has been amended to delete coverage therein of ethylene-unsaturated carboxylic acid anhydride copolymers (B1). In addition, claim 1 has been amended to limit the thermoplastic component to a thermoplastic polyester, thereby excluding polycarbonate from the claimed composition. Support for this recitation can be found in claim 12 which states that the composition consists of the thermoplastic polyester and the impact modifier, thereby excluding polycarbonate from the composition. In addition, claim 1 has been amended to include the contents of cancelled claim 13, i.e., to state that the impact modifier consists of the core-shell copolymer (A) and the ethylene copolymer (B).

The claim amendments made herein are based on claim features already considered by the Examiner, and, therefore, do not raise new issues. Applicants respectfully request that these claim amendments be entered.

New claim 14 limits the ethylene copolymer (B) to ethylene-unsaturated carboxylic acid anhydride copolymers (B1) and deletes methacrylate from the possible components of the core-shell copolymer (A). Applicants submit that new claim 14 is a narrow embodiment of the composition recited in claim 1 and does not raise new issues. Thus, Applicants respectfully request that new claim 14 be entered.

In the Office Action, claims 1-3, 5, 12 and 13 are rejected under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over EP '008; claims 1-3, 5, 7-9, 12 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over EP '008; and claims 1-3, 5, 8, 9, 12 and 13 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Dunkle; and claims 1-3, 5, 7-9, 12 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 6 and 8 of co-pending Application No. 09/718,426.

In view of the remarks and amendments herein, Applicants respectfully request reconsideration and withdrawal of the rejections set forth in the Office Action.

I. Rejection Under 35 U.S.C. § 102(b)/§ 103(a) Based on EP '008

Claims 1-3, 5, 12 and 13 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over EP '008.

Applicants respectfully submit that EP '008 would not anticipate or render obvious instant claims 1-3, 5 or 12.

As stated above, claim 1 has been amended in part to limit the thermoplastic component to a thermoplastic polyester and to state that the impact modifier consists of the core-shell copolymer (A) and the ethylene copolymer (B), thereby excluding polycarbonate from the claimed composition.

EP '008 is directed to compositions derived from recycled polycarbonate and polyester (see, e.g., the title). Thus, EP '008 requires the presence of a polycarbonate in the composition therein. Thus, EP '008 would not have motivated or suggested to one skilled in the art to provide a thermoplastic polyester composition containing an impact modifier, wherein the composition does not further include a polycarbonate.

Therefore, for at least the foregoing reasons, Applicants submit that EP '008 does not anticipate or render obvious instant claims 1-3, 5 and 12.

II. Rejection Under 35 U.S.C. § 103(a) Based on EP '008

Claims 1-3, 5, 7-9, 12 and 13 are rejected under 35 U.S.C. § 103(a) as being unpatentable over EP '008.

Applicants respectfully submit that EP '008 would not have rendered obvious instant claims 1-3, 5, 7-9 and 12.

Applicants submit that claims 1-3, 5 and 12 are not unpatentable over EP '008 for the reasons set forth in section I herein. Claims 7-9 depend upon claim 1 and, therefore, include the limitations of claim 1. Since claim 1 is patentable over EP '008 for the reasons given above, claims 7-9 are also patentable over this reference.

Claims 7-9 are further patentable over EP '008 for the additional reasons that EP '008 does not teach or suggest the limitations recited in these claims.

Therefore, for at least the foregoing reasons, Applicants submit that claims 1-3, 5, 7-9 and 12 would not have been obvious in view of EP '008.

III. Rejection Under 35 U.S.C. § 102(b)/§ 103(a) Based on Dunkle

Claims 1-3, 5, 8, 9, 12 and 13 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Dunkle.

Claim 1 has been amended in part to delete coverage therein of ethylene-unsaturated carboxylic acid anhydride copolymers (B1). Thus, the ethylene copolymer used in claim 1 and the claims dependent thereon is chosen from ethylene-unsaturated epoxide copolymers (B2). Claims 2, 3, 5, 8, 9 and 12 depend upon claim 1 and include this limitation.

Dunkle does not teach or suggest the use of ethylene-unsaturated epoxide copolymers. Therefore, for at least this reason, Applicants submit that Dunkle would not anticipate or render obvious instant claims 1-3, 5, 8 and 12.

IV. New Claim 14

Applicants submit that new claim 14 is patentable over EP '008 and Dunkle.

As mentioned previously herein, new claim 14 limits the ethylene copolymer (B) to ethylene-unsaturated carboxylic acid anhydride copolymers (B1). EP '008 does not teach or suggest the use of ethylene-unsaturated carboxylic acid anhydride copolymers. Therefore, for at least this reason, Applicants submit that EP '008 does not teach or suggest claim 14.

In addition, new claim 14 deletes acrylate from the possible components of the core-shell copolymer (A). Dunkle does not teach or suggest the use of a core-shell

copolymer that does not contain an acrylate component. Therefore, for at least this reason, Applicants submit that claim 14 would not be unpatentable over Dunkle.

V. Double Patenting Rejection

Claims 1-3, 5, 7-9, 12 and 13 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4, 6 and 8 of co-pending Application No. 09/718,426 ("the '426 application").

Enclosed is a copy of an Amendment filed in the '426 application on August 9, 2002. In the Amendment, Applicants amended claim 1 and added a new independent claim, i.e., claim 11. Specifically, in amended claim 1 of the '426 application, the (B)/(A) ratio is between 90/10 and greater than 60/40 for proportions of impact modifier between 2 and 40% in 98 to 60% of polyester. In new claim 11 of the '426 application, the (B)/(A) ratio ranges from 90/10 to a value greater than 40/60 for proportions of impact modifier between 2 and 18% in 98 to 82% of polyester.

In claims 1-3, 5, 7-9, 12 and 14 of the instant application, the (B)/(A) ratio is between 40/60 and 10/90 for proportions of impact modifier between 18 and 40% in 82 to 60% by weight of polyester, and between 40/60 and 25/75 for proportions of impact modifier between 2 and 18% in 98 to 82% of polyester.

Thus, the (B)/(A) ratios recited in the claims of the instant application do not overlap with the (B)/(A) ratio range recited in the claims of the '426 application. Thus,

Applicants submit that the instant claims do not conflict with the claims of the '426 application.

VI. Conclusion

In view of the amendments and remarks herein, Applicants respectfully request that the rejections of the claims be withdrawn and that claims 1-3, 5, 7-9, 12 and 14 be allowed.

Respectfully submitted,

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MARKED-UP VERSION OF AMENDED CLAIM

1. (Three Times Amended) Thermoplastic polyester compositions comprising, by weight:

(i) a thermoplastic [polyester] component consisting of a thermoplastic polyester; and

(ii) an impact modifier [comprising] consisting of:

(a) a core-shell copolymer (A); wherein the core consists of one or more polymers selected from the group consisting of isoprene homopolymers, butadiene homopolymers, copolymers of isoprene with at most 30 mol% of a vinyl monomer, copolymers of butadiene with at most 30 mol% of a vinyl monomer, alkyl (meth)acrylate homopolymers, and copolymers of alkyl (meth)acrylate with at most 30 mol% of a vinyl monomer, the vinyl monomer in the core being selected from the group consisting of a styrene, an alkylstyrene and an alkyl (meth)acrylate; further wherein the shell consists of one or more polymers selected from the group consisting of styrene homopolymers, alkylstyrene homopolymers, methyl methacrylate homopolymers, and copolymers consisting of at least 70 mol% of a styrene, alkyl styrene or methyl methacrylate with at most 30 mol% of a vinyl acetate; and

(b) an ethylene copolymer (B) chosen from [ethylene-unsaturated carboxylic acid anhydride copolymers (B1),] ethylene-unsaturated epoxide copolymers (B2);

(iii) the (B)/(A) ratio being between 40/60 and 10/90 for proportions of impact modifier between 18 and 40% in 82 to 60% of polyester, respectively;

(iv) the (B)/(A) ratio being between 40/60 and 25/75 for proportions of impact modifier between 2 and 18% in 98 to 82% of polyester, respectively.